IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2525 of 2007
With
SPECIAL CIVIL APPLICATION No. 4084 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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TORRENT POWER LIMITED - Petitioner(s)
Versus
KEVALCHAND DHANRAJ BHANDARI - Respondent(s)

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Appearance :
MR MJ THAKORE WITH MR KB PUJARA for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1,
MR KAMAL TRIVEDI WITH MR SANDIP C SHAH for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 11/09/2007

COMMON ORAL JUDGMENT

1. As both the petitions are interconnected, they are being considered by this common judgement.

2. The short facts of the case in Special Civil Application No.2525 of 2007 are that, as per the petitioner, on 14.06.1996, the electricity connection No. 262670 was checked and it was found that the meter seal was disturbed and therefore, the supply was disconnected. On 17.06.1996, the amount of Rs.15,000/- adhoc was paid and the respondent consumer preferred Complaint No.413/97 before the Consumer Forum of Ahmedabad City on 28.05.1997. In response to the proceedings initiated, the petitioner Electricity Company appeared and filed written statement on 10.01.1998. On 09.08.2003, the Consumer Forum dismissed the complaint holding that the amount came to be voluntarily paid by the complainant/consumer and as the assessment is pertaining to theft of electricity and as the meter was tampered, the action of the respondent Electricity Company cannot be said as deficiency in service and therefore, the complaint was dismissed. The respondent herein preferred appeal before the State Commission being Appeal No. 610/03 against the said decision of the State Commission after hearing the appellant therein who is the respondent herein (hereinafter he shall be referred to as “the consumer” for the sake of convenience), and respondent therein who is the petitioner

herein(hereinafter he shall be referred to as “the Electricity Company” for the sake of convenience), allowed the appeal and remanded the matter to the Consumer Forum. It deserves to be recorded that the State Commission in the said decision, transferred the matter from the Consumer Forum to District Consumer Forum, Rural, and further directed by fixing the date of hearing before the District Consumer Forum, Rural, on 24.11.2004 and the cost of Rs.1,000/- was to be deposited by the Electricity Company payable to the consumer and the direction was also given to decide the complaint within stipulated time limit. It appears that thereafter, the matter proceeded ex parte before the District Consumer Forum, Rural, and the Electricity Company did not appear at all. The District Consumer Forum, ultimately, on 21.12.2004, partly allowed the complaint and directed the Electricity Company to refund the amount of Rs.15,000/- with interest @ 9% from the date of complaint till recovery or in alternative, the Electricity Company was directed to adjust the amount in the electricity bill and the cost of Rs.2,500/- was also ordered to be paid. When the consumer initiated the proceedings for execution of the order of the District Consumer Forum, the Electricity Company preferred Appeal on 26.10.2005 against the decision of the District Consumer Forum, and as there was delay in preferring the Appeal, the

application for condonation of delay was also made being in Appeal No.740/06. The State Commission in the proceedings of the said Appeal, passed the order on 11.01.2007, whereby, while considering the question of delay, it also considered the merits of the matter prima facie and recorded that no evidence was led or was produced on behalf of the Electricity Company and the affidavit of the officer who made the checking or inspection was also not filed and therefore, ultimately, the application for condonation of delay as well as Appeal came to be dismissed and it is under these circumstances, the present petition by the Electricity Company before this Court under Article 226/227 of the Constitution.

3. In Special Civil Application No. 4084 of 2007, the facts appear to be that on 31.07.1997, electricity connection No.287200 of the consumer who is respondent herein was inspected and seals were found disturbed and the electricity supply was disconnected. As per the Electricity Company, the assessment was made on 01.08.1997 of Rs. 1,31,691/- and the consumer made adhoc payment of Rs.15,000/- on 02.08.1997 and electricity supply was reconnected. On 06.11.1997, the consumer filed complaint before the Consumer Forum of Ahmedabad City being Complaint No. 1186/97 and claimed refund of an amount of Rs.15,000/- with interest @ 18% and

also the compensation of Rs. 7,500/- and cost of Rs.5,000/-. The petitioner Electricity Company in response to the said complaint, appeared and filed the written submission on 01.08.1998. The Consumer Forum vide order dated 09.05.2003, observed that after the assessment of the theft of electricity and the tampering of the meter, the complainant had voluntarily paid the amount and it is not a case where the payment was made under compulsion and therefore, the complaint was dismissed. It appears that the consumer preferred the Appeal against the decision of the District Forum before the State Commission being Appeal No. 563/03 and the State Commission after hearing the consumer as well as the Electricity Company, allowed the appeal with the observations that the Electricity Company will consider the fact that this is a residential premise and that, even on the basis of the allegations of theft of electricity, further assessment of electricity charges should be made on the basis of the electricity bill issued on the reading from the old replaced meter. It was also observed that if the matter is settled between the parties accordingly, the parties will place the settlement before the learned Forum on or before 28.03.2003. It appears that as per the petitioner Electricity Company, without their knowledge, the said complaint came to be transferred to District Forum, Ahmedabad Rural and the District Forum, Ahmedabad Rural,

examined the matter on facts and found that the proper procedure is not followed and no details are given as to how the theft of electricity is committed and the tampering of the meter was not accepted and the District Forum found that there is unfair trade practice in recovery of the amount and therefore, by Order dated 09.05.2005, it has allowed the complaint and directed for refund of the amount of Rs.15,000/-. As per the petitioner, it came to know about the aforesaid decision only when the proceedings for execution were initiated and when it received the notice for execution dated 06.10.2006 from the District Forum. As per the petitioner, the reply to the execution application was submitted and at that stage, the petitioner has approached to this Court by preferring the present petition challenging the order of the District Forum.

4. Heard Mr.Thakore with Mr. Pujara, learned counsel appearing for the petitioner and Mr. Sandeep C. Shah for the respondents.

5. The learned counsel for the petitioner contended that it was a case of theft of electricity and tampering with the seal of the meter and therefore, would not fall in the jurisdiction of the Consumer Forum and as per the provisions of the Consumer Protection Act, 1986 (“C.P. Act” for short) read with the provisions of the Electricity Act, 2003 (“the Act of 2003” for

short). He submitted that the cases of theft of electricity as per the Act of 2003 would not fall within the jurisdiction of the Consumer Forum and in the submission of the learned counsel for the petitioner, the theft cases cannot be said as deficiency in service by the Electricity Company to the consumer and therefore, outside the jurisdiction of the Consumer Forum. It was contended that the jurisdiction of the Consumer Forum as per the Act of 2003 is completely barred and as the Consumer Forum exercised the jurisdiction, it was a case of no jurisdiction and therefore, the petitioner Electricity Company has approached to this Court by invoking the jurisdiction of this Court under Article 226/227 of the Constitution.

6. The learned counsel for also relied upon various decision, reported at (1996) 4 SCC 522, (1997) 9 SCC 465, (2000) 10 SCC 290, (2006) 4 SCC 649, the decision of the Delhi High Court reported at 130(2006) Delhi Law Times 156, and another decision dated 10.01.2007, directing the State Commission to not to pass any interim order in respect of complaints of the consumers where issue of direct theft of electricity or dishonest abstraction of electrical energy is alleged. The learned counsel also relied upon the decision of the High Court of Karnataka dated 02.06.2005 in writ petition No. 21747/04 for contending that the jurisdiction of the

Civil Court is also barred in the cases which fall under Section 127 of the Act of 2003 and the another decision of the High Court of Karnataka High Court dated 13.09.2004 in Writ Petition No. 29442/04 for contending that the cases of theft of electricity are only to be tried by Special Court as per the Act of 2003 and Consumer Forum will have no jurisdiction and he also relied upon the decision of the National Commission reported at 2(1995) CPJ 132(NC), 3(1997) CPJ 116(NC), and State Commission of Jaipur reported at 1995(3) CPR 562, State Commission of Karnataka reported at 1994(1) CPR 93 and State Commission of West Bengal reported at 2004(CPJ)433.

7. Whereas, on behalf of the consumer, respondent herein, Mr. Shah relied upon the decision of the Apex Court reported in 1994(1) SCC 243, 2002(6) SCC 635, for contending that the Consumer Forum has jurisdiction. He also relied upon the decision of the National Commission reported at 1996(2) CPJ 15(NC), 1993(1) CPJ27(NC), Gujarat State Commission 1993(1) CPJ 258 and another decision of Gujarat State Commission 1992(3) CPJ 527 for contending that as per the view taken, the Consumer Forum has the jurisdiction. It was also submitted on behalf of the respondent that in view of the provisions of Section 173 of the Act of 2003, the operation of the C.P.Act is expressly saved and therefore, it cannot be said

that the Consumer Forum has no jurisdiction. The learned counsel also contended that as per the jurisdiction of the Special Court, it has power to grant relief to the Electricity Company only as per Section 153(5) and 156 of the Act of 2003 and it has no power to grant any relief including that for compensation or otherwise to the consumer of the electricity and such a relief can also be granted by the Forum under the C.P.Act and therefore, it cannot be said that the jurisdiction of the Consumer Forum or Forum under the C.P. Act is completely barred. He further contended that whether theft of electricity is there or not would be a question of fact in each case and merely because a complaint of theft is filed or that the assumption is made by the Electricity Company as if it is a theft case would not ousted the jurisdiction of the Forum under the C.P.Act. It was also submitted that the petitioner, if aggrieved by the order of the State Commission, has the alternative efficacious remedy of approaching before the National Commission as per the provisions of the C.P.Act and the said alternative remedy is also not exhausted and therefore, the petition for challenging the Order of the State Commission directly to this Court is not maintainable.

8. To appreciate the controversy, it would be worthwhile to consider the relief prayed by the

Electricity Company in both the petitions.

9. In Special Civil Application No. 2525 of 2007, prayer 12(a) is for quashing and setting aside the order dated 11.07.2007 passed by the State Consumer District Redressal Commission in Appeal No. 740/06. Prayer 12(b) is for quashing and setting aside the order passed by the District Forum dated 21.12.2004 in Complaint No.413/97 and prayer 12(c) is for quashing and setting aside the execution proceeding in Execution Petition No. 62/05 by the Consumer Forum. Prayer 12(d) & (e) are for staying the execution and operation of the order passed by the State Commission as well as the District Forum and for staying the execution proceeding pending before the District Forum, which are subject matter of challenge in the above referred main prayer 12(a), 12(b) & 12(c).

10. However, surprising aspect is that thereafter prayer 12(f) is also added in which the relief prayed is to hold and declare that the Consumer Forum under the Consumer Protection Act, 1986, do not have the jurisdiction to entertain and adjudicate the matter of theft of electricity, unauthorised use of the electricity, tampering of the meter, and assessment therefore and other matters arising under the Electricity Act, 2003. The omnibus interim prayer is also made based on the aforesaid prayer 12(f) to the effect to restrain the Consumer Dispute Redressal

Commission, Gujarat State, and Consumer Dispute Redressal Forums from passing any interim orders or final orders in respect of the complaints involving theft of electricity, unauthorised use of electricity, tampering of meters, and assessment therefore, etc. and other matters arising under the Electricity Act, 2003.

11. More or less, similar situation is in Special Civil Application No.4084 of 2007 inasmuch, the initial prayers are for challenging the orders passed by the Consumer Forum and the execution proceedings and the interim prayer for staying the operation of the order passed by the Consumer Forum and to stay further proceedings of the execution application, arising therefrom.

12. Even in this petition also, prayer 12(c) and 12(d) is surprisingly added to hold and declared that the Consumer Forum and the State Commission under the Consumer Protection Act, do not have the jurisdiction to entertain the complaints arising from theft of the electricity, malpractice, tampering of the meter, disconnection of supply, assessment etc., under the Electricity Act, 2003, and interim prayer based on the aforesaid prayer 12 (c) is also made.

13. The first aspect which is required to be considered is the relief prayed to hold and declare that the Consumer Forum has no

jurisdiction under the C.P. Act in a case where the theft of electricity, malpractice, or tampering of the meter, disconnection of supply, assessment etc. which are under the Electricity Act of 2003. The facts of the present case as referred to hereinabove pertains to the period of 1997 and at that stage, the Act of 2003 was neither in operation nor was even enacted by the Parliament. The Act of 2003 has no applicability whatsoever to both the cases of the concerned consumer which was subject matter of proceedings before the Consumer Forum or State Commission, as the case may be. It cannot be disputed that during the period of 1997, the Act prevailing was not an Act of 2003, but was the Indian Electricity Act, 1910(“the Electricity Act of 1910” for short), and the Electricity(Supply) Act, 1948 (“the Electricity Supply Act” for short) and the Electricity Regulatory Commission Act, 1998 (“the Regulatory Commission Act” for short).

14. The learned counsel for the petitioner has not been able to show any statement made in the petition to any action pertaining to the alleged theft cases or of malpractice or of tampering of the electricity connection or meter, which came to be considered by the Consumer Forum and which was subject matter before the Forum whose orders are under challenge in both the petitions. Only the statements appear to have been made in the

petition by way of submission that in view of the Electricity Act of 2003, and the scheme thereof, the Forum would not have the jurisdiction to entertain the complaint under the C.P. Act.

15. Therefore, it is an admitted position that the cases which are subject matter of both the petitions pertain to the period much prior to the Act of 2003 coming into force and the Act of 2003 has no applicability whatsoever to the facts of such cases which are considered by the Consumer Forum or the State Commission, as the case may be.

16. If the impugned orders which are under challenge of the Consumer Forum and as that of the State Commission are pertaining to the period prior to the Act of 2003 coming into force, the prayers made by the petitioner can be said as based on not the factual foundation, but a mere academic. In any of the cases of both the petitions, there are no fact situation that the Act of 2003 was in operation and was to apply and inspite of the same, the Consumer Forum has exercised the power. Therefore, it appears that in both the petitions, even if the petitions are considered as it is, including the statement made therein, there is no justification made out for the prayers based on the Act of 2003 much less any interim prayer

thereof. Therefore, the prayers made in the petition based on the Act of 2003 are without any basis of factual foundation and at the most, can be said as mere academic, more particularly, when not a single instance is averred by the petitioner that such and such was the subject matter governed by the Act of 2003 and inspite of the same, the matter is considered by the Consumer Forum under the C.P. Act.

17. It is by now well settled that this Court would not exercise the power under Article 226/227 of the Constitution to undertake any academic exercise or would not rule a particular point for any academic purpose. The power may be exercised only when the very action is found ultra vires or the judicial scrutiny of the very action or the order is under challenge. Therefore, in both the petitions, the prayers based on the Act of 2003 and an interim omnibus prayer restraining the Consumer District Redressal Commission, Gujarat State and the Consumer Forum under C.P. Act, from entertaining any complaint arising out of theft or malpractice by which it may disconnect the supply under the Act of 2003, are wholly without any basis and cannot be granted.

18. In view of the aforesaid situation, the decision upon which the reliance is placed by the learned counsel to contend that in view of

the Act of 2003, the Consumer Forum under the C.P. Act has no jurisdiction, are not required to be considered, and if considered, it would result into mere academic exercise in absence of any factual foundation for such purpose.

19. The next aspect which may be required to be considered is for examining the challenge to the legality and validity of the orders passed by the Consumer Forum or the State Commission, as the case may be. It was also contended by the learned counsel for the petitioner that this Court may examine the matter on the basis of the position prevailing prior to the Act of 2003, and then also the Consumer Forum will not have any jurisdiction in theft cases and therefore, this Court may quash and set aside the orders passed by the District Consumer Forum or the State Commission, as the case may be.

20. There cannot be any dispute on the aspects that the power is exercised by the Consumer Forum at the first instance under the C.P. Act. Not only that, but after initiation of the proceedings, the petitioner Electricity Company in both the cases have appeared before the Consumer Forum and the matter was not only considered on the aspects of jurisdiction, but was also considered on merits of the case after considering the facts of each case. When the consumer concerned preferred the Appeal before the State Commission

against the decision of the Consumer Forum at first instance for dismissal of the complaint, the petitioner Electricity Company has surrendered to the jurisdiction of the State Commission, not only by appearing, but by accepting the decision of the State Commission in both the cases of allowing the Appeal and remanding the matter to the District Forum.

21. It is an admitted position that at the relevant point of time, the order of the State Commission is not challenged by the petitioner Electricity Company and rather accepted the same by its implied conduct, inasmuch as, the said order of the State Commission allowing of the Appeal is not even challenged in the present proceeding. It is only after the order passed by the Consumer Forum, that too after remand, when the decision is against the petitioner, it has approached to this Court by invoking the jurisdiction under Articles 226/227 of the Constitution contending that the Consumer Forum has no jurisdiction. Not only that, but in Special Civil Application No.2525/07, the petitioner Electricity Company has also challenged the order passed by the Consumer Forum by preferring Appeal before the State Commission and it is only when the State Commission dismissed the Appeal, the jurisdiction of this Court is invoked under Article 226/227 of the Constitution. In both the

cases, after a period of about 10 years from the initiation of the proceeding, a writ is prayed before this Court contending that the Consumer Forum has no jurisdiction under the C.P. Act.

22. The aforesaid conduct on the part of the petitioner would disentitle the petitioner to invoke the jurisdiction of this Court under Article 226/227 of the Constitution, more particularly when the petitioner has the remedy available of challenging the decision of the Consumer Forum or the State Commission, as the case may be, before the State Commission or before the National Commission, as per the provisions of the C.P. Act. Even otherwise also, it is by now well settled that when the statute provides the express remedy and the forum is provided, this Court by way of self imposed restriction would not exercise the power under Article 226/227 of the Constitution. It is an admitted position that the petitioner has not resorted to the remedies as provided under the C.P. Act, and therefore, considering the aforesaid facts and circumstances, as the alternative efficacious remedy is available under the law, the relief prayed for quashing and setting aside the order of the District Forum or the State Commission, as the case may be, cannot be granted. Reference be made to the decision of the Apex Court in U.P. State Bridge Corpn. Ltd. Vs. U.P. Rajya Setu Nigam S.

Karamchari Sangh reported at 2004 (4) SCC 268, and and more particularly, the observations made at paras 11 & 12.

23. In view of the above, both the petitions fail and they are dismissed. Rule discharged. Ad interim relief granted earlier shall stand vacated.

24. Mr. Pujara, learned counsel for the petitioner at this stage prays that the interim order passed by this Court has remained in operation pending the petitions and therefore, it may be continued for some time, so as to enable the petitioner to approach before the Higher Forum or to take recourse of the remedy available under law.

25. Considering the facts and circumstances, if such prayer is granted, it would result into prohibiting the statutory authority from exercising the power, more particularly in view of the fact situation that there is no applicability of the Act of 2003 in the facts of the present case, and hence such relief is declined.

(JAYANT PATEL, J.)

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